

Deposition of Dr. Louis Chelton

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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS

RAMUNDO RUIZ,
Plaintiff,

CIVIL ACTION

vs.

FILE NO. 6:07-CV-56

U.S. PROTECT MICHAEL B.
MUKASEY, ATTORNEY GENERAL
OF THE UNITED STATES,

Defendants.

VIDEOTAPED DEPOSITION OF

DR. LOUIS CHELTON

ATLANTA HARTSFIELD JACKSON INTERNATIONAL AIRPORT

JULY 15, 2008/9:30 a.m.

REPORTED BY:
ANNA-MARIE CHEAK, RPR/CSR
ESQUIRE DEPOSITION SERVICES
ATLANTA OFFICE - 404-872-7890
FILE NO: 427409

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<p>1 APPEARANCES OF COUNSEL</p> <p>2</p> <p>3 On behalf of the Plaintiff:</p> <p>4 JOHN W. GRIFFIN, ATTORNEY AT LAW</p> <p>5 Marek, Griffin & Knaupp</p> <p>6 203 Liberty Street</p> <p>7 Victoria, Texas 77901</p> <p>8 361-573-5500</p> <p>9</p> <p>10 On behalf of the Defendant, Attorney General of the</p> <p>11 United States:</p> <p>12 JIMMY A. RODRIGUEZ, ASSISTANT UNITED STATES ATTORNEY</p> <p>13 United States Department of Justice</p> <p>14 Southern District of Texas</p> <p>15 919 Milam, Suite 1500</p> <p>16 Houston, Texas 77208</p> <p>17 713-567-9532</p> <p>18</p> <p>19 On behalf of the Defendant, U.S. Marshals Service:</p> <p>20 C. JOSEPH CARROLL, ATTORNEY AT LAW</p> <p>21 U.S. Marshals Service</p> <p>22 Washington, D.C. 20010</p> <p>23 202-305-9573</p> <p>24</p> <p>25 Also present: Derrick Jones, Certified Videographer</p>	<p>1 Plaintiff's Exhibits Continued Page</p> <p>2</p> <p>3 No. 4.....Composite, first page, Doctors Center, 87</p> <p>4 Current Audiogram</p> <p>5 No. 5.....Judicial Security Division, Medical 56</p> <p>6 Review Form</p> <p>7 No. 6.....Excerpts from Gunnels & Naquin vs 120</p> <p>8 Akal, et al Deposition</p> <p>9 No. 7.....Report from Lynn E. Cook, Occupational 54</p> <p>10 Audiologist</p> <p>11 No. 8.....Charge of Discrimination 57</p> <p>12 No. 9.....Audiometric Examination 94</p> <p>13 No. 10....Composite, first page, E-mail from 52</p> <p>14 Portia Troutman to Colin Murphy</p> <p>15 2/5/07</p> <p>16 No. 11....Audiometric Threshold Shift 124</p> <p>17 No. 12....FY Lookup for Audio for Rec ID: 119</p> <p>18 2194423</p> <p>19 +++end exhibits+++</p> <p>20 All Exhibits Listed Above Are Attached To Deposition</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
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<p>1 INDEX TO EXAMINATION</p> <p>2</p> <p>3 By Mr. Griffin.....page 6</p> <p>4 By Mr. Rodriguez...page 126</p> <p>5</p> <p>6 INDEX TO EXHIBITS</p> <p>7 Previously Marked Initial Ref. Page</p> <p>8 Plaintiff's Exhibit</p> <p>9 No. 8....CSO Medical Standards - Hearing 25</p> <p>10 12/12/03</p> <p>11 Defendant's Exhibit</p> <p>12 No. 4....Letter to Judy Wimberly from Ramundo 131</p> <p>13 Ruiz, 3/23/06</p> <p>14 No. 5....Letter to Judy Wimberly from Ramundo 117</p> <p>15 Ruiz, 6/12/06</p> <p>16 No. 6....Judicial Security Division, Medical 73</p> <p>17 Review Form</p> <p>18 Marked for this deposition: Page</p> <p>19 Plaintiff's Exhibit</p> <p>20 No. 1.....Judicial Security Division, Medical 81</p> <p>21 Review Form</p> <p>22 No. 2.....Letter to Lynn Cook from Gina Parks 124</p> <p>23 8/17/06</p> <p>24 No. 3.....Document titled Hearing 36</p> <p>25 Nos. 24 - 29</p>	<p>1 PROCEEDINGS</p> <p>2 VIDEOGRAPHER: This is Tape Number 1</p> <p>3 in the videotaped deposition of Dr. Louis</p> <p>4 Chelton taken by the Plaintiff in the</p> <p>5 matter of Case Number 607-CV-56, Ramundo</p> <p>6 Ruiz versus U.S. Protect Michael B.</p> <p>7 Mukasey, Attorney General of the United</p> <p>8 States, to be heard in the United States</p> <p>9 District Court for the Southern District</p> <p>10 of Texas.</p> <p>11 The deposition is being held at the</p> <p>12 Crown Room Club located at Hartsfield</p> <p>13 International Airport, Atlanta, Georgia.</p> <p>14 Today's date is July 15, 2008. The time</p> <p>15 is approximately 9:31 a.m.</p> <p>16 The court reporter is Anna Cheak.</p> <p>17 The videographer is Derrick Jones on</p> <p>18 behalf of Esquire Deposition Services.</p> <p>19 Would Counsel and all present please</p> <p>20 introduce yourself, after which the Court</p> <p>21 Reporter will swear the Witness.</p> <p>22 MR. GRIFFIN: Good morning, I'm John</p> <p>23 Griffin. I represent Ramundo Ruiz.</p> <p>24 MR. RODRIGUEZ: Good morning, I'm</p> <p>25 Jimmy Anthony Rodriguez, and I represent</p>

2 (Pages 2 to 5)

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<p>1 disqualification memos that you yourself signed.</p> <p>2 A Do you want me to name these pages?</p> <p>3 Q You don't have to at this point. I just</p> <p>4 want to confirm that the ones that got the flaggys</p> <p>5 on them are the ones that you have signed yourself</p> <p>6 with respect to CSOs who were disqualified for their</p> <p>7 hearing impairments.</p> <p>8 MR. RODRIGUEZ: Do you have an extra</p> <p>9 copy of this?</p> <p>10 MR. GRIFFIN: I do. I apologize for</p> <p>11 having duplicates of some of them, of the</p> <p>12 pages in there. I killed more trees than</p> <p>13 I needed to and I'm duly repentant.</p> <p>14 A I've got one here where I don't see that</p> <p>15 it is a disqualification, and actually, it appears</p> <p>16 to be signed by Dr. Miller rather than me.</p> <p>17 BY MR. GRIFFIN:</p> <p>18 Q Okay. Well, take the flaggy off the one</p> <p>19 that you didn't sign. We don't need a flaggy on</p> <p>20 anything that you didn't sign. So thank you for</p> <p>21 that.</p> <p>22 A And there are times when due to the number</p> <p>23 of records we review, when he was over reviewing</p> <p>24 mine and I made -- he wanted to do something</p> <p>25 differently, he would print it out again and sign</p>	<p>1 your typewriting stuff in there and that sort of</p> <p>2 thing. I just want to know, when you say Law</p> <p>3 Enforcement Officers must have adequate hearing</p> <p>4 skills, which Law Enforcement Officers are we</p> <p>5 talking about --</p> <p>6 A Well --</p> <p>7 Q -- that need good hearing skills, that</p> <p>8 you're talking about here?</p> <p>9 A On this document, it refers to Court</p> <p>10 Security Officers.</p> <p>11 Q But I thought you told me a half hour ago</p> <p>12 that Court Security Officers are not Law Enforcement</p> <p>13 Officers. I thought you told me they were not, and</p> <p>14 made a point to tell me that I was wrong in calling</p> <p>15 them that; do you remember that?</p> <p>16 A Yeah.</p> <p>17 Q Is that true that you did correct me when</p> <p>18 I called them Law Enforcement Officers?</p> <p>19 A Yes. I said that we call them Security</p> <p>20 Officers now, and that I've been asked to refer to</p> <p>21 them as such, rather than Law Enforcement.</p> <p>22 Q How many years did you refer to -- how</p> <p>23 many years in your memos did you refer to Law</p> <p>24 Enforcement Officers insofar as the need for them to</p> <p>25 be able to hear adequately?</p>
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<p>1 it, rather than bring it back to me and make me sign</p> <p>2 it again, though he would let me know about the</p> <p>3 change.</p> <p>4 Q Well, thank you for sharing that.</p> <p>5 A Yeah. All of these signatures are my</p> <p>6 signatures.</p> <p>7 Q Okay. In the ones that you've signed, I</p> <p>8 want to ask you about one of the things that you say</p> <p>9 in these memos. You say Law Enforcement Officers</p> <p>10 must possess and maintain adequate hearing,</p> <p>11 including the ability to hear soft sounds,</p> <p>12 understand speech.</p> <p>13 When you talk about Law Enforcement</p> <p>14 Officers, who are you speaking of when you make</p> <p>15 those statements in your memos?</p> <p>16 A In this memo, this is a -- what we call a</p> <p>17 template, which is a set of canned verbiage that you</p> <p>18 bring up, and then adjust to meet the exact needs of</p> <p>19 the instance. In this case, I'm referring to Court</p> <p>20 Security Officers.</p> <p>21 Q Okay.</p> <p>22 MR. GRIFFIN: Let me object to the</p> <p>23 responsiveness.</p> <p>24 BY MR. GRIFFIN:</p> <p>25 Q I'm not really concerned about how you put</p>	<p>1 A I don't know.</p> <p>2 Q Let me have you take a look at what has</p> <p>3 been previously marked as Ray Ruiz Defendant's</p> <p>4 Exhibit No. 6. Do you have that before you?</p> <p>5 A Yes.</p> <p>6 Q Tell us what that is, if you don't mind,</p> <p>7 please?</p> <p>8 A This is the Medical Review Form that</p> <p>9 documents the statement of disqualification of</p> <p>10 Mr. Ruiz for decreased hearing.</p> <p>11 Q Okay, let me just ask you this. When you</p> <p>12 talk about the -- with respect to Mr. Ruiz -- let me</p> <p>13 just come around and make sure I'm looking at the</p> <p>14 same page as you are. Are these identical -- one of</p> <p>15 these is signed here.</p> <p>16 Now, tell me, earlier in the day, why it</p> <p>17 was that you corrected me when I called the Court</p> <p>18 Security officers, Law Enforcement Officers?</p> <p>19 A My understanding is that we've encountered</p> <p>20 difficulty, because people have attempted to</p> <p>21 construe the term Law Enforcement Officer as such a</p> <p>22 broad term that it can, in some way that I don't</p> <p>23 fully understand, imply a major life activity</p> <p>24 disability, when that wasn't what we intended to</p> <p>25 state.</p>

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<p>1 So the term Security Officer refers more 2 directly to the Court Security Officer's position. 3 And what we're trying to indicate is that our 4 judgment is made with regard to this job and this 5 job only, not as a blanket statement about any other 6 job, but just the Court Security Officer job. 7 Q So is that -- my question -- make sure I'm 8 understanding -- was that the reason why you 9 corrected me this morning when I called Court 10 Security Officers, Law Enforcement people? 11 A Yes. 12 Q But we agree that in the hundreds of pages 13 of your records, for years, you have called Court 14 Security Officers, Law Enforcement Officers, haven't 15 you? 16 A Yes. 17 Q Hundreds of times, right? 18 A Yes. I've used that phrasing in many, 19 many documents. 20 Q Right, and -- it's okay if you do or you 21 don't, but you don't know whether -- well, let me 22 just ask you. Within your expertise of Occupational 23 Health, do you think those six things that are 24 listed there on Exhibit -- is it 3, Dr. Chelton? 25 A Yes.</p>	<p>1 they are identical to the ones that we require. 2 Q If you can tell me yes, no, or I don't 3 know for each of those; for Special Agents for 4 Treasury, is it important that those Special Agents 5 be able to understand speech during face-to-face 6 conversations? 7 A Yes, I think it is. 8 Q And for those special agents at Treasury, 9 is it important they be able to understand speech on 10 the telephone? 11 A Yes. 12 Q Is it important for those Special Agents 13 to be able to understand speech on the radio? 14 A Yes. 15 Q Is important for those Special Agents to 16 understand speech even where they can't see another 17 officer? 18 A Yes. 19 Q Is it important for those Special Agents 20 to hear sound that require investigation? 21 A Yes. 22 Q Is it important for those Special Agents 23 to be able to know where sound is coming from? 24 A Yes. 25 Q Did someone ever instruct you not to call</p>
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<p>1 Q Yeah, on Exhibit 3, do you have any idea 2 whether those six abilities to hear are important in 3 law enforcement or not? 4 A I can only say with regard to Law 5 Enforcement Agencies where I know their standards. 6 Q Which are those? 7 A That to be TIGTA, the Treasury Inspector 8 General for Tax Administration, and for the Court 9 Security Officer Program. 10 Q For the Special Agents for -- did you say 11 Treasury? 12 A Yes. Treasury Inspector General for Tax 13 Administration. 14 Q But those were Special Agents, were they 15 not? 16 A Special Agents. 17 Q Yeah, GS-1811 Law Enforcement positions? 18 A Correct. 19 Q Are those six necessary hearing functions 20 for those Special Agents? 21 A I don't have the Standards right in front 22 of me for that Agency, and I would hesitate to say 23 that I know these to be identical there. These 24 were -- this set is generated specifically for the 25 Court Security Officer Program, and I can't say that</p>	<p>1 Court Security Officers Law Enforcement people in 2 your memos? 3 A Yes. 4 Q Who instructed you not to do that anymore? 5 A A number of people. 6 Q Who first? 7 A I can't say that exactly, but I know 8 that -- I would be guessing, but I suspect that it 9 was probably Tom Galvan. It may have been Joe 10 Carroll. I don't know exactly. It may have even 11 have been Dr. Miller -- one of them through him to 12 me. 13 I don't know. I got that instruction that 14 this was problematic language, and it would be 15 better to call them Security Officers. 16 Q Problematic in what sense? 17 A In the sense that it was being used to 18 portray a picture of the judgment we were making, 19 which was not accurate; that we were making a 20 blanket judgment about law enforcement in general, 21 rather than a specific judgment about this 22 particular job, which we wanted to correct any 23 misunderstanding of that, or misrepresentation. 24 Q How old a gentleman are you, sir? 25 A I'm 57.</p>

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<p>1 MR. GRIFFIN: I'll pass the Witness 2 at this time. 3 VIDEOGRAPHER: We're off the record 4 at 12:32 p.m. 5 (Recess from 12:32 to 12:41). 6 VIDEOGRAPHER: This is the beginning 7 of tape number three in the continued 8 deposition of Dr. Louis Chelton. We're on 9 the record at 12:41 p.m. 10 EXAMINATION 11 BY MR. RODRIGUEZ: 12 Q Good afternoon, Dr. Chelton. 13 A Hello. 14 MR. RODRIGUEZ: For the record, the 15 Defendants, and then Dr. Chelton, we'd 16 like to reserve his right to review and 17 sign the transcript. 18 BY MR. RODRIGUEZ: 19 Q Dr. Chelton, you had discussed earlier how 20 you're not an Audiologist. What is your -- what is 21 the Field of Medicine in which you are an expert? 22 A I am an expert in the application of 23 medical information to the specific job functions of 24 a Court Security Officer. 25 Q Is it true that FOH, the Federal</p>	<p>1 They also, even the in-canal hearing aids, 2 change the reflection of sound off of the ears as it 3 passes down the canal, and this is important in 4 localization, up and down and front and back. 5 In addition to that, there are problems 6 with malfunction. They can malfunction. They can 7 be poorly maintained. They can be left out by 8 accident. In addition to that, there's the 9 possibility of dislodgement in the course of a 10 aggressive interaction with a perpetrator, for 11 example. 12 In the sum total of all of these risks -- 13 oh, and I should add one more thing, and that is 14 that the difficulty of trying to monitor the range 15 of different kind of hearing aids available and the 16 regular checking necessary to make certain that they 17 would remain in functional order is very -- would 18 seem extremely demanding. 19 As a total picture, all of those things 20 taken together, it's my understanding that the 21 Marshal Service made the decision not to allow 22 hearing aids to replace adequate hearing without 23 them. I think that explains it. 24 BY MR. RODRIGUEZ: 25 Q So why would -- why does the Marshal</p>
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<p>1 Occupational Health, is the Federal Government's 2 Expert Agency in the field of Occupational Medicine? 3 MR. GRIFFIN: Objection to form. 4 A It is a -- as far as I know, it's the only 5 specific department that is specifically addressing 6 Occupational Medicine. 7 BY MR. RODRIGUEZ: 8 Q And does the FOH through you provide 9 medical advice to the U.S. Marshal Service? 10 A Yes. 11 Q Now, why are CSOs not allowed to wear 12 hearing aids in order to meet the Minimal Hearing 13 Standards? 14 MR. GRIFFIN: Objection to form. 15 A There are a number of reasons that I 16 understand that decision has been made that include 17 difficulties with the nature of the improvement that 18 hearing aids can provide. 19 That includes a limitation of the 20 frequency range that it reproduces, such that there 21 is a narrower range than the full range of human 22 hearing; that they also change the phase of the 23 sound waves as they reach the two ears, so that 24 directional localization in the horizontal plane is 25 interfered with hearing aids in place.</p>	<p>1 Service, and through the assistance of FOH, allow 2 some CSOs to wear hearing aids on the job but then 3 not allow them to wear hearing aids to meet the 4 minimal standards? 5 MR. GRIFFIN: Objection to form. 6 A The Marshal Service -- and again, this is 7 my understanding, the Marshal Service wants to be 8 certain that under any circumstances there is 9 baseline unaided hearing that will be adequate to 10 function in the job. 11 They do not, however, feel that they can 12 say with any clarity that the overall effect of 13 hearing aids will diminish the quality of hearing. 14 So they leave this judgment to the Court Security 15 Officer to say if you feel that ultimately you hear 16 better, all things considered, we trust your 17 judgment in that. 18 However, you must pass without them, so 19 that we know you can function if it malfunctions or 20 gets knocked out or you remove it, because you can't 21 tell the location of a sound. 22 BY MR. RODRIGUEZ: 23 Q Why would Mr. Ruiz's hearing condition 24 present a risk to the Courthouse and Courthouse 25 Security?</p>